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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1430-PWS-E TCEQ ID: RN101438802 CASE NO.: 7251
RESPONDENT NAME: KMALI ENTERPRISES, INC. DBA FRIENDLY MART

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 19234 Kuykendahl, Spring, Harris County</p> <p>TYPE OF OPERATION: convenience store with a public water supply</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 7, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Water Enforcement Section, MC 169, (512) 239-1482</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3581</p> <p style="margin-left: 20px;">Respondent: Mr. Ali Karim, Registered Agent, Kmali Enterprises, Inc. 19234 Kuykendahl, Spring, Texas 77379</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: June 22, 2006</p> <p>Date of NOE Relating to this Case: August 24, 2006</p> <p>Background Facts: The EDPRP was filed and mailed on March 23, 2007. The certified mail, return receipt "green card" was signed on April 6, 2007. The Respondent failed to file an Answer, failed to request a hearing, and failed to request a settlement conference.</p> <p>PWS: 1. Failed to secure a sanitary control easement covering all property within 150 feet of the well [30 TEX. ADMIN. CODE § 290.41(c)(1)(F)]. 2. Failed to provide public drinking water that meets the secondary constituent level for pH. Specifically, a water sample collected on June 16, 2003, revealed a pH level of 6.6. The water waster system is required to maintain a pH level of 7.0 or greater [30 TEX. ADMIN. CODE 290.118(a) and (b)]. 3. Failed to locate the well site so that the well is not located within 150 feet of an underground petroleum storage tank. Specifically, an underground petroleum storage tank was within 150 feet of the well used for the public water supply [30 TEX. ADMIN. CODE § 290.41 (c)(1)(A)].</p>	<p>Total Assessed: \$804</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$804</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions(s)</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days, either secure a sanitary control easement covering all property within 150 feet of the well location and file the easement in the county courthouse, or obtain an exception by rule; Within 45 days, submit written certification of compliance with Ordering Provision 1. Within 90 days: <ol style="list-style-type: none"> Either locate the well site so that the well is not located within 150 feet of an underground petroleum storage tank, or obtain an exception to the rule; and Ensure that water delivered to the distribution system meets the Commissioner's minimum standards for pH. This requirement shall be accomplished by initiating one of the following technical requirements: <ol style="list-style-type: none"> Install facilities to treat the existing water being supplied; Blend the current water with water of an acceptable source; or Abandon the current source of water and rely entirely on an alternate acceptable source of water. Within 105 days, submit written certification to demonstrate compliance with Ordering Provision 3.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	15-Aug-2006	Screening	22-Aug-2006	EPA Due	
	PCW	16-Nov-2006				

RESPONDENT/FACILITY INFORMATION			
Respondent	Kmail Enterprises, Inc. dba Friendly Mart		
Reg. Ent. Ref. No.	RN101438802		
Facility/Site Region	12-Houston	Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	7251	No. of Violations	3
Docket No.	2006-1430-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Enf. Coordinator	Sandy VanCleave
Multi-Media		EC's Team	Order Tracking Team
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$600**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 9% Enhancement Subtotals 2, 3, & 7 **\$54**

Notes: The Respondent received one NOV for the same violation and two NOVs that are not the same or similar as those violations addressed in this enforcement action.

Culpability Yes 25% Enhancement Subtotal 4 **\$150**

Notes: The Respondent was sent a sample sanitary control easement and information to obtain an exception to the rule by the Houston Regional Office via facsimile on On July 3, 2002, and by the Enforcement Division via facsimile on April 27, 2006. Additionally, on November 10, 2003, information pertaining to a sanitary control easement was left with the store clerk during an exit interview by a Houston Regional Office investigator.

Good Faith Effort to Comply 0% Reduction Subtotal 5 **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: Respondent is not yet in compliance.

Economic Benefit 0% Enhancement* Subtotal 6 **\$0**

Total EB Amounts	\$2,612
Approx. Cost of Compliance	\$15,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$804**

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount **\$804**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$804**

DEFERRAL 0% Reduction Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended due to culpability.

PAYABLE PENALTY **\$804**

Screening Date 22-Aug-2006

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Docket No. 2006-1430-PWS-E

PCW

Respondent Kmail Enterprises, Inc. dba Friendly Mart

Policy Revision 2 (September 2002)

Case ID No. 7251

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101438802

Media [Statute] Public Water Supply

Enf. Coordinator Sandy VanCleave

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 9%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent received one NOV for the same violation and two NOVs that are not the same or similar as those violations addressed in this enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 9%

Screening Date 22-Aug-2006

Docket No. 2006-1430-PWS-E

PCW

Respondent Kmail Enterprises, Inc. dba Friendly Mart

Policy Revision 2 (September 2002)

Case ID No. 7251

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101438802

Media [Statute] Public Water Supply

Enf. Coordinator Sandy VanCleave

Violation Number

1

Primary Rule Cite(s)

30 Tex. Admin. Code § 290.41(c)(1)(F)

Secondary Rule Cite(s)

Violation Description

Failed to secure a sanitary control easement covering all property within 150 feet of the well. Specifically, during the investigation, the manager of the Facility acknowledged that the water system had not obtained a sanitary control easement.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			X

Percent 5%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to secure a sanitary control easement covering all property within 150 feet of the well could result in an insignificant amount of pollutants which do not exceed levels that are protective of human health entering the water supply.

Adjustment -\$950

Base Penalty Subtotal \$50

Violation Events

Number of Violation Events 1

	daily	
	monthly	
mark only one	quarterly	
use a small x	semiannual	
	annual	
	single event	X

Violation Base Penalty \$50

One single event is recommended based on documentation of the violation during the June 22, 2006 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$17

Violation Final Penalty Total \$67

This violation Final Assessed Penalty (adjusted for limits) \$67

Economic Benefit Worksheet

Respondent Kmail Enterprises, Inc. dba Friendly Mart

Case ID No. 7251

Reg. Ent. Reference No. RN101438802

Media [Statute] Public Water Supply

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	10-Nov-2003	01-May-2007	3.5	\$17	n/a	\$17
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to complete a survey and file a sanitary control easement in the county courthouse or obtain an exception to the rule. Date required is the date the violation was documented during a previous investigation. The final date is the estimated date of compliance.

Avoided Costs		ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)					
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$17

Screening Date 22-Aug-2006

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Docket No. 2006-1430-PWS-E

PCW

Respondent Kmail Enterprises, Inc. dba Friendly Mart

Policy Revision 2 (September 2002)

Case ID No. 7251

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101438802

Media [Statute] Public Water Supply

Enf. Coordinator Sandy VanCleave

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code §§ 290.118(a) and (b)

Secondary Rule Cite(s)

Violation Description

Failed to provide public drinking water that meets the secondary constituent level for pH. Specifically, during the investigation, it was documented that a water sample collected on June 16, 2003 revealed a pH level of 6.6. The water system is required to maintain a pH level of 7.0 or greater.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to maintain a pH level of 7.0 or higher may increase the corrosiveness of the water resulting in an insignificant amount of pollutants which do not exceed levels that are protective of human health distributed to the public.

Adjustment -\$950

Base Penalty Subtotal \$50

Violation Events

Number of Violation Events 1

	daily	
	monthly	
mark only one	quarterly	
use a small x	semiannual	
	annual	
	single event	x

Violation Base Penalty \$50

One single event is recommended based on the sample date of June 16, 2003.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,148

Violation Final Penalty Total \$67

This violation Final Assessed Penalty (adjusted for limits) \$67

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Economic Benefit Worksheet

Respondent Kmail Enterprises, Inc. dba Friendly Mart
Case ID No. 7251
Reg. Ent. Reference No. RN101438802
Media [Statute] Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	16-Jun-2003	01-Oct-2007	4.3	\$2,148	n/a	\$2,148

Notes for DELAYED costs

Estimated cost to treat or blend water to meet the secondary constituent levels. Date required is the date a water sample was collected. Final date is the estimated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$10,000****TOTAL** **\$2,148**

Screening Date 22-Aug-2006

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Docket No. 2006-1430-PWS-E

PCW

Respondent Kmail Enterprises, Inc. dba Friendly Mart

Policy Revision 2 (September 2002)

Case ID No. 7251

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101438802

Media [Statute] Public Water Supply

Enf. Coordinator Sandy VanCleave

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code 290.41(c)(1)(A)

Secondary Rule Cite(s)

Violation Description

Failure to locate well site so that the well is not located within 150 feet of an underground petroleum storage tank. Specifically, during the investigation, it was documented that an underground petroleum storage tank was within 150 feet of the well used for the public water supply.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	

Matrix Notes

Failure to ensure that the well is at least 150 feet from an underground petroleum storage tank could expose the water supply's source water to be contaminated with a significant level of pollutants which would exceed levels protective of human health.

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 2

mark only one use a small x	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$500

Two monthly events are recommended based on documentation of the violation during the June 22, 2006 investigation to the screening date of August 22, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$447

Violation Final Penalty Total \$670

This violation Final Assessed Penalty (adjusted for limits) \$670

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Economic Benefit Worksheet

Respondent Kmail Enterprises, Inc. dba Friendly Mart
Case ID No. 7251
Reg. Ent. Reference No. RN101438802
Media [Statute] Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$5,000	22-Jun-2006	01-Oct-2007	1.3	\$21	\$426	\$447
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to relocate the well to ensure that the well is not 150 feet of a petroleum underground storage tank or obtain an exception to the rule. Date required is the investigation date. Final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$5,000****TOTAL** **\$447**

Compliance History

Customer/Respondent/Owner-Operator:	CN600747646	Kmali Enterprises, Inc.	Classification: Avg by Default	Rating: 3.01
Regulated Entity:	RN101438802	FRIENDLY MART	Classification: Avg by Default	Site Rating: 3.01
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	1012339
	PETROLEUM STORAGE TANK		REGISTRATION	35219
	REGISTRATION			
	WATER LICENSING		LICENSE	1012339
Location:	19234 KUYKENDAHL, SPRING, TX, 77379		Rating Date: September 01 05 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	August 31, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 31, 2001 to August 31, 2006			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Sandy VanCleave		Phone:	(512) 239-2670

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur?

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 01/09/2004 (257244)
- 2 08/10/2006 (483220)
- 3 04/12/2006 (460992)
- 4 10/24/2002 (147736)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/06/2006 (460992)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failure to provide a sanitary control easement for all property within a 150 foot radius of the well

Self Report? NO

Classification: Major

Citation: 2A TWC Chapter 7, SubChapter A 7.101

Rqmt Prov: ORDER IA

Description: Failure to comply with the Ordering Provisions of Commission Order 2000-0680-PWS-E.

Date: 01/09/2004 (257244)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(B)

30 TAC Chapter 290, SubChapter F 290.110(c)(5)(C)

Description: Failure to perform at least once every seven days, chlorine residual tests on water collected from various locations within the distribution system.

Date: 10/24/2002 (147736)

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(I)

30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)

Description: Failure to maintain and lock the well house cover and to prevent the accumulation of water around the wellhead.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KMALI ENTERPRISES, INC. DBA
FRIENDLY MART,
RN101438802**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2006-1430-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Kmali Enterprises, Inc. dba Friendly Mart ("Kmali").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Kmali owns and operates a convenience store with a public water supply located at 19234 Kuykendahl, Spring, Harris County, Texas (the "Facility").
2. The Facility has approximately one service connection and serves at least 25 people per day for at least 60 days per year.
3. During an inspection on June 22, 2006, a TCEQ Houston Regional Office investigator documented that Kmali:
 - a. failed to secure a sanitary control easement covering all property within 150 feet of the well. Specifically, during the investigation, the manager of the Facility acknowledged that the water system had not obtained a sanitary control easement;
 - b. failed to provide public drinking water that meets the secondary constituent level for pH. Specifically, during the investigation, it was documented that a water sample collected on June 16, 2003 revealed a pH level of 6.6. The water system is required to maintain a pH level of 7.0 or greater; and

- c. failed to locate the well site so that the well is not located within 150 feet of an underground petroleum storage tank. Specifically, during the investigation, it was documented that an underground petroleum storage tank was within 150 feet of the well used for the public water supply.
4. Kmali received notice of the violations on or about August 29, 2006.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Kmali Enterprises, Inc. dba Friendly Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on March 23, 2007.
6. By letter dated March 23, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Kmali with notice of the EDPRP. According to the return receipt "green card", Kmali received notice of the EDPRP on April 4, 2007, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Kmali received notice of the EDPRP, provided by the Executive Director. Kmali failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Kmali is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Kmali failed to secure a sanitary control easement covering all property within 150 feet of the well. Specifically, during the investigation, the manager of the Facility acknowledged that the water system had not obtained a sanitary control easement, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(F);
3. As evidenced by Finding of Fact No. 3.b., Kmali failed to provide public drinking water that meets the secondary constituent level for pH. Specifically, during the investigation, it was documented that a water sample collected on June 16, 2003 revealed a pH level of 6.6, in violation of 30 TEX. ADMIN. CODE § 290.118(a) and (b). The water system is required to maintain a pH level of 7.0 or greater; and
4. As evidenced by Finding of Fact No. 3.c., Kmali failed to locate the well site so that the well is not located within 150 feet of an underground petroleum storage tank. Specifically, during

the investigation, it was documented that an underground petroleum storage tank was within 150 feet of the well used for the public water supply, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(A).

5. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Kmali with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 7, Kmali has failed to file a timely answer to the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Kmali and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Kmali for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of eight hundred four dollars (\$804.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b).
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Kmali is assessed an administrative penalty in the amount of eight hundred four dollars (\$804.00) for violations of TEX. HEALTH & SAFETY CODE ch. 341 and rules of the TCEQ. The payment of this administrative penalty and Kmali's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid

within 30 days after the effective date of this Order and shall be sent with the notation "Re: Kmali Enterprises, Inc. dba Friendly Mart; Docket No. 2006-1430-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Kmali shall undertake the following technical requirements:
 - a. Within 30 days of the effective date of this Order, Kmali shall either secure a sanitary control easement covering all property within 150 feet of the well location and file the easement in the county courthouse, as required by 30 TEX. ADMIN. CODE § 290.41, or obtain an exception to the rule;
 - b. Within 45 days after the effective date of this Order, Kmali shall submit written certification of compliance with Ordering Provision 2.a as described in Ordering Provision 2.e.
 - c. Within 90 days after the effective date of this Order, Kmali shall:
 - i. Either locate the well site so that the well is not located within 150 feet of an underground petroleum storage tank, in accordance with 30 TEX. ADMIN. CODE § 290.41 or obtain an exception to the rule; and
 - ii. Ensure that the water delivered to the distribution system meets the Commission's minimum standards for pH, as required by 30 TEX. ADMIN. CODE § 290.118. This requirement shall be accomplished by initiating one of the following technical requirements:
 - a. Install facilities to treat the existing water being supplied;
 - b. Blend the current water with water of an acceptable source; or
 - c. Abandon the current source of water and rely entirely on an alternate acceptable source of water.
 - d. Within 105 days after the effective date of this Order, Kmali shall submit written certification of compliance with Ordering Provision 2.c as described in Ordering Provision 2.e.

- e. The certifications required by Ordering Provision 2.b and 2.d shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Stephen Smith, Water Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Ave., Ste. H
Houston, Texas 77023-1452

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Kmali. Kmali is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Kmali shall be made in writing to the Executive Director. Extensions are not effective until Kmali receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Kmali if the Executive Director determines that Kmali has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF TRACY CHANDLER

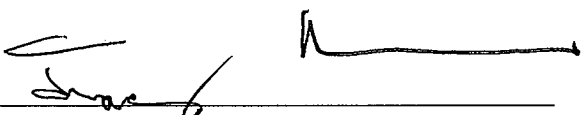
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Tracy Chandler. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Kmali Enterprises, Inc. dba Friendly Mart” (the “EDPRP”) with the Office of the Chief Clerk on March 23, 2007.’

I sent the EDPRP to Kmali at its last known address on March 23, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Kmali received notice of the EDPRP on April 4, 2007, as evidenced by the signature on the card.

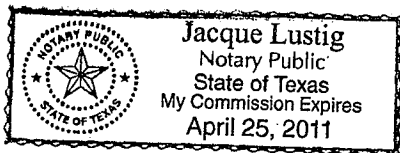
More than 20 days have elapsed since Kmali received notice of the EDPRP. Kmali failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.

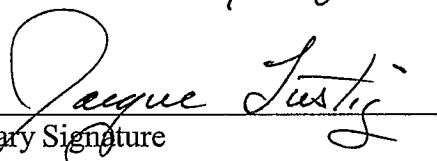


Tracy Chandler
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tracy Chandler, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 18th day of July, A.D., 2007.





Notary Signature